

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

(9)

1. O.A. No. 2227/1991

DATE OF DECISION: 1.S.92

SHRI P.H. KURIAN

.. APPLICANT

VERSUS

UNION OF INDIA & ANOTHER

.. RESPONDENTS

2. O.A. No. 2226/1991

SHRI K. SHIVAJI

.. APPLICANT

VERSUS

UNION OF INDIA & ANOTHER

.. RESPONDENTS

CORAM:-

THE HON'BLE MR. JUSTICE RAM PAL SINGH, VICE CHAIRMAN(C)

THE HON'BLE MR. K.J. RAMAN, MEMBER(A)

FOR THE APPLICANTS

S/SHRI CHANDRASEKHARAN and
MADHAV PANIKKAR,
Counsel.

FOR THE RESPONDENTS:

SHRI P.H. RAMCHANDANI,
Senior Standing Counsel

1. Whether Reporters of the local papers
may be allowed to see the Judgement?

Yes

2. To be referred to the
Reporter or not?

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. K.J. RAMAN, MEMBER (A))

JUDGEMENT

The facts, issues and the reliefs claimed in the above
two O.As. 2227/91 and 2226/91 are closely interconnected,
and these two applications are, therefore, being disposed of
by this common order.

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2. The applicant in O.A. 2227/91 was appointed to the Indian Administrative Service (IAS) on the basis of the Civil Services Examination held in 1985. According to the applicant, in his application form submitted to the Union Public Service Commission (UPSC) in respect of the said examination, he ~~gave~~ for the Kerala Cadre as his first option, before the said examination was held. Due to a change in the rules regarding such option, ~~the~~ all the successful candidates are stated to have been asked to exercise their fresh option in the prescribed form. Only two options were given, namely, allotment to the Home State or other States. It is the case of the applicant that, in this form of option, he had opted for his home State, i.e., Kerala. In the 1986 batch of successful candidates, only two officers were allotted to the IAS from the State of Kerala and the applicant was the first in rank between the two, he having secured the 74th rank in the All India Merit List. When the allotment was actually made in 1986, the applicant was informed that he was allotted to the Orissa Cadre and the ~~with~~ other candidate ~~in~~ the lower rank from Kerala, was allotted to the Kerala Cadre. It is stated that, immediately on receipt of the communication, the applicant contacted the Department of Personnel, and was informed that he had erroneously filled the option form and he was thus denied his home cadre. The applicant thereafter submitted a representation on 17-11-1986 to the Secretary to the Government of India, Department of Personnel and Training through the Director, LBSNAA, Mussoorie. In this representation, the applicant had stated that he was surprised to see his allotment to Orissa, although he belonged to the State of Kerala and he had opted for allotment to that State. The applicant further stated in that representation that he had secured the first position among the successful candidates belonging to Kerala appointed on the basis of the said examination, and according to the policy of the Government, he should have been allotted to the Kerala cadre, and not the candidate below

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had
him in rank. The applicant clearly stated that, if there
was any erroneous reading of his option form by the con-
cerned official, which had resulted in the above position,
the Department of Personnel should rectify the same.

3. The above representation of the applicant was,
however, rejected by respondent-1 (hereinafter referred to
as respondents) by the issue of the following letter:-

"No. 13013/12/AIS(I)
Government of India
Ministry of Personnel, Public Grievances
and Pension,
(Department of Personnel & Training)
.....

New Delhi, the 13th January, 1987

To

The Director,
Lal Bahadur Shastri National Academy of
Administration,
Mussoorie (U.P.).

Subject: I.A.S. - Allotment of Probationers to
various State Cadre/Joint Cadres -
request for change of cadre

Sir,

With reference to your letter No. 12/8/ASP/86
dated the 19th November, 1986, on the subject mentioned
above, I am directed to say that the Government of India
have considered the request of Shri P.H. Kurian an Indian
Administrative Service Probationer, but regret that it is
not possible to change his allotment, which is based on
set principles. He may please be informed accordingly.

Yours faithfully,

Sd/-
(P.N. Kohli)
Under Secy. to the Govt. of India"
(Emphasis Added)

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4. Thereafter, the applicant submitted another representation on 20-12-1989. In this representation, apart from repeating the contents of the previous representation and also referring to the guide-lines in regard to allotment, the applicant reproduced the actual option/submitted by him in regard to the allotment of cadre. He submitted in this representation that he had ~~scored~~ out the second alternative of rejection of allotment to the home State and had indicated: 'I would opt for my home State Kerala'. The applicant further contended that the concerned authorities had arbitrarily misread his option and had misconstrued the same as if, the applicant had stated:

"I would not opt for my home State Kerala".
He further pointed out that his earlier representation was wrongly dealt with as if it was a prayer for a change of cadre from Orissa to Kerala. He, therefore, requested that his claim for allotment to Kerala be reconsidered on the basis of facts contained in this representation.

5. This representation also met with the same fate as his earlier representation and it was rejected by the issue of the impugned order dated 6-8-1991. The impugned order was in the following terms:-

"No. 13017/6/91-AIS(I)
Government of India
Ministry of Personnel, P.G. and Pensions
Dept. of Personnel and Training.

New Delhi, the 6th August, 1991

To

The Chief Secretary to the
Government of Orissa,
General Administration Department,
Bhubaneswar.

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Sub: I.A.S. (Cadre) Rules, 1954 - Request of
Shri P.H. Kurian, I.A.S. (RR. 1986) for
change of cadre from Orissa to Kerala

Sir,

I am directed to refer to your letter No. AIS/I-3/90, 12944/Gen., dated the 15-5-1991 on the subject mentioned above and to say that this Department has carefully considered the representation submitted by Shri P.H. Kurian, I.A.S. (RR. 1986) for his allotment to Kerala, but it is regretted that his request cannot be agreed to.

2. Shri Kurian may kindly be informed accordingly.

Yours faithfully,

Sd/-

Under Secretary to the Govt. of India "

6. Being aggrieved with the above order, the applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

- i) to quash the order dated 6-8-1981 issued by the Under Secretary to the Government of India informing the applicant that his request for a change of allotment of Cadre is not possible;
- ii) to reallot the applicant his State Cadre, i.e. Kerala with due seniority; and
- iii) to pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the case."

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7. The facts in the other Original Application No. 2226/91 may now be briefly noted. That applicant too was a successful candidate in the Civil Service Examination of 1985 and his rank was at Serial No.71 of the Merit List. He had opted for allocation to his home State of Bihar, but according to the policy guide-lines, admittedly, he could not be allotted to that State as he was not sufficiently high up in the Merit List compared to the other candidates from that State. The applicant has no grievance in this regard. He has been allotted to Kerala. After his allotment to Kerala, the applicant submitted a representation dated 9-4-1991 to the Secretary Department of Personnel, through the proper channel, seeking allotment to Orissa cadre, if Shri P.H. Kurian, the applicant in the other O.A. 2227/91 was allotted to the State of Kerala. In this representation, the point taken by the applicant was that Shri Kurian had been wrongly allotted to the State of Orissa, even though he had opted for his home State of Kerala. If the wrong allotment had not been given to Shri Kurian, the latter would have been allotted to Kerala and consequently, the applicant Shri Shivaji would not have been allotted to Kerala. Presumably, the applicant was not happy with his allotment to Kerala cadre far away from his home State. The applicant had contended that he would have then ~~been~~ allotted to some other State, particularly to Maharashtra, according to his rank. The applicant had also indicated in his representation that the reallocation of Shri Kurian to Kerala Cadre and himself to Orissa Cadre in the place of Shri Kurian, would not affect any one adversely since these changes were limited to a few places in the Merit List. This representation was, however, turned down by the impugned order dated 1-8-1991 by the respondents. No reasons were indicated in the impugned order. Being aggrieved, the applicant has filed this application

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seeking the following reliefs:-

" i) to quash the order dated 1-8-1991 passed by the Deputy Secretary to the Government of Kerala;

ii) to allot the applicant the Orissa Cadre of the IAS; and

iii) to pass such other order or orders, as may be deemed fit and proper in the facts and circumstances of the case."

8. The basic ground urged by the applicant in OA 2227/91 is that he had opted for allotment to his own Home State, Kerala in the pro forma in question and that the concerned officials had under respondent-1 misconstrued and wrongly taken his option as for outside his home State, and the respondents had not applied their minds properly to the right reading of his option and had consequently arbitrarily rejected his representation for correcting the error in the allotment, which was against the avowed policy of the Government. The applicant in the other O.A. 2226/91, basically relies on this very contention of the applicant, Shri Kurian, and claims his reliefs referred to above as a consequence of the correction of the error of allotment in respect of Shri Kurian. Both these applicants have averred that the reallocations claimed by both of them, if allowed, would not cause any prejudice to any other person, as the impact of such re-allotment would be very limited.

9. Respondent-2, the UPSC have neither filed any reply nor have they entered appearance. It does not appear they are in any manner substantially involved in this controversy.

10. The respondents have filed replies in both the applications. These replies generally refer to the policy of allotment of "insiders" and "outsiders" and the proportion of allotment thereof, etc. The essence of the argument of the respondents in both the cases, is that Shri Kurian, the applicant in OA 2227/91, had expressed his desire not to be allocated to his Home State, Kerala, and, therefore, he was allotted to Orissa in accordance with the policy guide-lines. It is denied that the applicant had opted for allotment to his home State in the prescribed pro forma. It is stated that a 'plain reading of the declaration' of the applicant, Shri Kurian, in the prescribed pro forma indicated that he did not want to go to his home State. There is a vague statement that it would not be administratively feasible to make any change in the allotment which was made in 1986. What exactly ~~or indicated~~ was the difficulty is not explained in the reply. It is stated ^{two} that the claims made in these applications amount to a case of mutual transfer which is not permissible according to the policy adopted. In regard to Shri Shivaji, it is contended that his claim is hypothetical, and in any case, even if Shri Kurian's allotment is changed to Kerala, he would not have any claim for allotment to Orissa as ~~stated~~ by him. Even though it is stated that acceptance of the request of the applicant would have 'serious repercussions', no indication thereof ~~was~~ given in the reply.

11. The applicants have submitted rejoinders reiterating their contentions in the applications. It has been pointed out that recently a change of allotment from Punjab to Haryana Cadre has been allowed to an appointee of 1986 belonging to the same batch as these two applicants. It is, therefore, contended that it is wrong on the part of the respondents to say that such re-allotments are never done. It is also further clarified that Shri Shivaji has sought allotment to Kerala only in order to minimise the repercussions of the change caused by the error on the part of the respondents.

It is stated that Shri Shivaji is not averse to allotment to Maharashtra cadre in accordance with his rank in the Merit List.

12. The case has been heard when Shri Chandrasekharan the learned counsel for the two applicants, and Shri P.H. Ramachandran, the learned counsel for the respondents, submitted their arguments, on the lines indicated above.

13. The learned counsel for the applicants further explained that the changes sought for in the allotment would affect only four persons, namely, Sarvashri K. Shivaji, A. Shukla, Subrat Ratha and K.K. Gupta, apart from Shri Kurian. He stated that, out of these persons Shri K.K. Gupta left service long ago. According to the learned counsel, ~~xxxxxx~~ no prejudice would be caused and there would be no administrative problem in acceding to the request of the applicants in these cases by way of re-allotment of Shri Kurian to Kerala Cadre and Shri Shivaji to Orissa Cadre. The learned counsel also pointed out that the applicant had indeed opted for allotment to the State of Kerala in the prescribed ^{pro forma}.

14. The learned counsel for the respondents, on the other hand, vehemently contended that the applicant was correctly taken to have opted for allotment outside Kerala. He referred to the form in question, and the word scored off there, and stated that, ^{on} a plain reading of the declaration in the said ^{pro forma}, it was properly considered that the applicant had not opted for allotment to his home State. He stated that, in any case, being an IAS ^{to} electee, the applicant ought not ^{to} have made an ambiguous declaration, and if he ^{had} committed any error, he should blame himself, and there was no justification for changing the allotment at this stage. In reply to our queries, the learned counsel stated that in accommodating the applicants in the two cadres, there would be administrative problems. When he was asked to explain what these were, he stated that the appointees were initially posted to various States to gather experience, and to absorb the ambience

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in the ~~these~~ious States and after having done so, it would not be appropriate to detach them from those surroundings and post ~~would~~ to other States where they ~~have~~ to begin anew all over again. He could not give us any further instances of repercussions or problems in the ~~re-allocation~~.

15. The respondents have furnished the pro forma for exercise of the options as an annexure to the reply. The form is as follows:-

" PROFORMA I

I, Shri/Km. _____ (Roll No.:-)

am a candidate in the Civil Services Examination, 1985 and I belong to _____.

2. In case, I am finally recommended and appointed to the I.A.S. I would~~#~~/would not like to be considered for allocation to the State to which I belong viz. _____.

Signature _____

Roll No. _____

*Strike out which is not applicable"

16. They have also furnished a photostat copy of the declaration in the said pro forma submitted by Shri Kurian. The said pro forma is as follows:-

"PROFORMA I

I, Shri/Km. P.H. KURIAN (Roll No. 149402,
am a candidate in the Civil Services Examination, 1985
and I belong to KERALA State.

2. In case, I am finally recommended and appointed to the I.A.S., I would~~#~~/would not like to be considered for allocation to the State to which I belong viz. KERALA.

Sd/- P.H. Kurian
Signature: 12-4-1986*

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17. In the photostat copy annexed to the reply as above, the word 'not' in Item 2 in the declaration is not only thickly underlined, but there is also a tick mark just above the word in the pro forma, giving the impressions as if the applicant himself had added ~~redubious~~ emphasis to the word 'not' in the declaration. Had this been the position, there would have been no case at all for the applicant. When we queried the learned counsel for the applicant in this regard, he strongly urged that the underlining and ticking of the word 'not' in the pro forma was not from the hands of the applicant at all, and this has been added by the concerned officials in the Department of Personnel. We, therefore, requested the learned counsel for the respondents to show us the original pro forma given by the applicant. The learned counsel for the respondents readily admitted that the underlining and ticking of the said word 'not' was the handiwork of someone in the Department of Personnel and not that of the applicant. We thereafter perused the original pro forma which showed that the underlining and ticking has been made in pencil by someone and it is not in the ink used by the applicant in filling up the other columns by the applicant, and thus confirming that the misleading emphasis is not of the applicant but that of someone in the Department of Personnel. The nett position is that the applicant had cut off the word 'would' after the oblique symbol in the said pro forma vide para 16 above.

18. The applicant has strenuously urged that his filling up the pro forma as above could only be considered as an option for posting in the State of Kerala, i.e. to the effect, 'I would like to be considered for allocation to Kerala'. The contention of the respondents, on the other hand is, 'on a plain reading', the pro forma should be read as:-

'I would not like to be considered for allocation Kerala'.

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19. We have given our anxious consideration to the contention of the respondents as indicated above. The pre forma was expected to be read, not by a layman, but by a avowed experts regularly dealing with these matters in the Department of Personnel, and its hierarchy can be expected to be fully aware of the object and import of the said pre forma. Even the pre forma itself is fairly obvious in this regard. The pre forma clearly allows for two alternatives, and not only one. It is not worded as follows:-

"I would not like to be considered Kerala," with the footnote or asterisk requiring the striking out the word not applicable. If that had been the position, the striking of the word "not" or the non-striking thereof, would indicate the appropriate alternative selected by the candidate. The actual pre forma contains a dividing line or oblique or what is called by the applicant as a selidus, between the two alternatives, namely, would/would not. The asterisk mark is, therefore, properly placed on the first alternative (would). It can be reasonably and normally be expected that a candidate opting to be allotted to Kerala would leave the first word and alternative viz., "would" intact, and also strike of the second alternative 'would not'. In this case, the applicant had left the first alternative visibly intact while at the same time he had struck off the second alternative (would not), but partially, covering only the first word 'would' in the second alternative. We are of the opinion that on a plain reading of the option exercised by the applicant by persons expected to be familiar with the object and intent of the pre forma, it ought to have been taken as an option for the first alternative in the pre forma, i.e. allotment of home Cadre of Kerala. Only a person not familiar with the alternatives in question would consider the option exercised by the applicant as has been concluded by the respondents in this case. Such a construction is very strange and

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it does not take into account the clear provision of the two options and the word would repeated twice. It appears to us that some person in the office of the respondents had obviously misconstrued and misread the option of the applicant leading to an error in the allotment of the applicant outside his home State.

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20. Even assuming that there was ambiguity in the declaration since the word not in the second option was unscored, the respondents ought to have taken this option for allotment to Kerala and not to the contrary. In any case, when the applicant represented about the erroneous allotment immediately after the order was issued in 1986, and after he submitted his representation dated 17-11-1986, the appropriate authorities among the respondents should have applied their minds to the statement of the applicant in his representation that he had indeed opted for his home State, and praying for the correction of any error in the reading of his option. We fail to understand how any one would lose anything at that stage if the applicant's contention had been accepted, even by giving him the benefit of doubt, and correcting the error. Instead of doing so, the respondents had issued the order dated 13-1-1987 vide para/supra. It is stated in this order that the allotment of the applicant could not be changed as it was made on set principles. The respondents must have known very well that there was no dispute/raised by the applicant in his representation. It was a question of fact which he had raised. This rejection on the basis of 'set principles' which are not specified even now, was highly arbitrary and capricious, and shows lack of proper application of mind, and it cannot be sustained. The applicant, after/certain interval, again submitted his representation dated 20-12-1989 reiterating the earlier contentions in more detail. He also explained how his option ought to have been considered or read. The learned counsel for the respondents pointed out to

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the delay in the submission of this representation. There is
there was
no doubt a considerable delay between the two representations.
We are, however, not inclined to hold that this delay had vitiates
any consideration of the grievances of the applicant for the
correction of his erroneous allotment. The respondents themselves
had
took cognisance of this representation and considered it on merits
and rejected the same by the issue of the impugned order dated 6-8-1991.
There is no contention in regard to laches and delay raised in the reply
by the respondents. We do not think that the remedy of the grievance
of the applicant in this case is in any way barred.

21. In the view we are holding as above, that the
obvious
respondents committed an error in the allotment of the applicant in
1986 by misreading his option, the only question which remains is as
to how that error has to be rectified at this stage. As indicated
by us earlier in this order, we wanted to know whether there were
practical
any substantial difficulties in correcting the error and realletting
Shri Kurian to his home State in accordance with his declarations
and we have not received any clear and convincing reply from the
side of the respondents. The applicants in their rejoinders have
pointed out that there have been realletments after several years
of original allotment. We are, therefore, of the opinion that,
prima facie, the claim of the applicant, Shri Kurian for re-allotment
and not a negative manner
to his home State should be considered in a positive manner, without
or pedantic
raising purely academic questions. The respondents have not at all
been able to rebut the contention of both the applicants that the
realletments would not cause any prejudice to any persons.

22. The case of the applicant, Shri Shivaji, in the
other application is a consequential one based on that of Shri
Kurian. There is substance in his contention that he would not have
been allotted to Kerala if no error had been committed in the allotment

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of Shri Kurian. There is also good sense in his contention that he is willing to be posted to Orissa instead of Maharashtra, only with ~~to cause~~ a view/~~minimum~~ upset in the existing allotments.

23. In the context of the foregoing, we are of the opinion that, prima facie, both the applicants have a very strong case for the re-allotments claimed by them and it would be only fair/their claims should be considered in a positive/~~manner~~ by the respondents expeditiously.

24. ^{case} In the conspectus of the facts and circumstances of this/ we pass the following orders:-

- i) The impugned orders dated 13-1-1987 and 6-8-1991 in O.A. 2227/91, and the impugned order dated 1-8-1991 in OA 2226/91 are set aside.
- ii) Respondent-1 shall consider allotting the applicant in OA 2227/91 to his home cadre of Kerala on the basis that he had opted in 1986 for posting to his home cadre. Consequently, the Respondent-1 shall consider reallocation of the applicant in OA 2226/91 as prayed for by him to the State of Orissa or otherwise; and such considerations should be made in both the cases in the light of the discussions above.
- iii) Action as in (ii) above shall be completed and the decision communicated to the applicants within a period of three months from the date of receipt of a copy of this order by respondent-1.

(iv) If the request of the two applicants are not acceded to by the respondents, they shall issue a fully speaking order giving the reasons for their decisions.

(v) If the applicants are aggrieved with the decisions taken by the respondents as above, and if so advised, they are at liberty to avail of remedies under the law, including approach to this Tribunal.

(vi) The applications are disposed of accordingly.

(vii) There will be no order as to costs.

K. J. Raman M)

(K. J. RAMAN)
Member (A)

Ram Pal Singh

(RAM PAL SINGH)
Vice Chairman